

AMENDED IN SENATE APRIL 14, 1999

AMENDED IN SENATE APRIL 5, 1999

**SENATE BILL**

**No. 588**

**Introduced by Senator Rainey**

February 23, 1999

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An act to *amend Section 4009 of the Family Code, and to amend Sections 11350 and 11350.1 of, and to add Section 11477.03 to, 11350.1, and 11477 of the Welfare and Institutions Code, relating to support.*

LEGISLATIVE COUNSEL'S DIGEST

SB 588, as amended, Rainey. Support obligations to CalWORKs recipients.

Existing law provides for the California Work Opportunity and Responsibility to Kids (CalWORKs) program, under which each county provides cash assistance and other benefits to qualified low-income families.

Existing law requires that in any case of separation or desertion of a parent or parents from a child or children that results in the granting of CalWORKs benefits, the noncustodial parent or parents shall be obligated to the county for an amount equal to the amount specified in an order for the support and maintenance of the family issued by a court of competent jurisdiction. In the absence of an order, the noncustodial parent or parents would be liable for the amount of support that would have been specified in such an order, provided that any such amount in excess of the aid paid

to the family under the CalWORKs program shall not be retained by the county, but disbursed to the family.

This bill would ~~further~~ provide that liability of a ~~noncustodial~~ parent or parents under this provision ~~would commence only upon the filing of~~ *may be made retroactive to the date the complaint or other pleading initiating the support action was served on the defendant.*

*Existing law requires that the amount of this obligation be determined by using the appropriate child support guidelines currently in effect and requires this obligation to be calculated in a certain manner if one or neither parent is a custodial parent.*

*This bill would delete this latter requirement and would provide, instead, that if the child does not reside with either parent, the custodial parent's income shall be zero for purposes of determining guideline child support.*

Existing law requires that, as a condition of CalWORKs eligibility, the applicant assign to the county any rights to support which he or she may have from another person, either in his or her own behalf or in ~~in~~ behalf of any other family member.

This bill would permit ~~the district attorney and a support obligor~~, in any action in which support has been assigned to the county by a CalWORKs recipient, ~~to stipulate to an order that suspends upon the stipulation of the district attorney and the support obligor, the court to suspend the prospective~~ accrual of interest *on the unpaid judgment*, subject to the meeting of specified conditions.

Existing law provides that, in any action brought by the district attorney for the support of a minor child or children receiving CalWORKs benefits, the action may be prosecuted in the name of the county on behalf of the child, children, or a parent of the child or children. Under existing law, judgment in an action brought pursuant to these provisions may be rendered pursuant to a noticed motion.

This bill would further provide that ~~a~~ *an original* support order made pursuant to the above provisions may be *made retroactive to the date of filing of the complaint or other initial pleading was served on the defendant being ordered to pay child support.*

*Existing law also provides generally that any order for child support may be retroactive to the date of filing the notice of motion or order to show cause, or to any subsequent date, except as provided by federal law.*

*This bill would provide, instead, that an original order for child support may be made retroactive to the date the complaint or other initial pleading was served on the defendant being ordered to pay child support.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. *Section 4009 of the Family Code is*  
2 *amended to read:*

3 4009. *An original order for child support may be made*  
4 *retroactive to the date of filing the notice of motion or*  
5 *order to show cause, or to any subsequent date, except as*  
6 *provided by federal law (42 U.S.C. Sec. 666(a)(9)) the*  
7 *complaint or other initial pleading was served on the*  
8 *defendant being ordered to pay child support.*

9 SEC. 2. *Section 11350 of the Welfare and Institutions*  
10 *Code is amended to read:*

11 11350. (a) *In any case of separation or desertion of a*  
12 *parent or parents from a child or children which results*  
13 *in aid under this chapter being granted to that family, the*  
14 *noncustodial parent or parents shall be obligated to the*  
15 *county for an amount equal to the following:*

16 (1) *The amount specified in an order for the support*  
17 *and maintenance of ~~such~~ the family issued by a court of*  
18 *competent jurisdiction; or in the absence of such court*  
19 *order, the amount specified in paragraph (2).*

20 (2) *The amount of support which would have been*  
21 *specified in an order for the support and maintenance of*  
22 *the family during the period of separation or desertion*  
23 *provided that ~~any such~~ this amount in excess of the aid*  
24 *paid to the family shall not be retained by the county, but*  
25 *disbursed to the family and further provided, however,*  
26 *that the liability of a noncustodial parent or parents under*  
27 *this paragraph shall commence only upon the filing of the*

1 ~~complaint or other pleading initiating the action.~~  
2 *disbursed to the family. However, a court may order that*  
3 *the liability of a parent or parents under this paragraph*  
4 *may be made retroactive to the date the complaint or*  
5 *other pleading initiating the action was served on the*  
6 *defendant.*

7 (3) The obligation shall be reduced by any amount  
8 actually paid by ~~such~~ the parent directly to the custodian  
9 of the child or to the district attorney of the county in  
10 which the child is receiving aid during the period of  
11 separation or desertion for the support and maintenance  
12 of the family.

13 (b) The district attorney shall take appropriate action  
14 pursuant to this section as provided in subdivision (l) of  
15 Section 11475.1. The district attorney may establish  
16 liability for child support as provided in subdivision (a)  
17 when public assistance was provided by another county  
18 or by other counties.

19 (c) The amount of the obligation established under  
20 paragraph (2) of subdivision (a) shall be determined by  
21 using the appropriate child support guidelines currently  
22 in effect. *If the child does not reside with either parent,*  
23 *the custodial parent's income shall be zero for purposes*  
24 *of determining guideline child support.* The parents shall  
25 pay the amount of support specified in the support order  
26 to the district attorney.

27 ~~SEC. 2.—~~

28 SEC. 3. Section 11350.1 of the Welfare and Institutions  
29 Code is amended to read:

30 11350.1. (a) Notwithstanding any other statute, in  
31 any action brought by the district attorney for the support  
32 of a minor child or children, the action may be prosecuted  
33 in the name of the county on behalf of the child, children,  
34 or a parent of the child or children. The parent who has  
35 requested or is receiving support enforcement services of  
36 the district attorney shall not be a necessary party to the  
37 action but may be subpoenaed as a witness. Except as  
38 provided in subdivision (e), in an action under this  
39 section there shall be no joinder of actions, or  
40 coordination of actions, or cross-complaints, and the

1 issues shall be limited strictly to the question of parentage,  
2 if applicable, and child support, including an order for  
3 medical support. A final determination of parentage may  
4 be made in any action under this section as an incident to  
5 obtaining an order for support. An action for support or  
6 parentage pursuant to this section shall not be delayed or  
7 stayed because of the pendency of any other action  
8 between the parties.

9 (b) Judgment in an action brought pursuant to this  
10 section, and in an action brought pursuant to Section  
11 11350, if at issue, may be rendered pursuant to a noticed  
12 motion, that shall inform the defendant that in order to  
13 exercise his or her right to trial, he or she must appear at  
14 the hearing on the motion. An *original* order for support  
15 made pursuant to this section may be *made* retroactive  
16 to the date ~~of filing of~~ the complaint or other initial  
17 pleading *was served on the defendant being ordered to*  
18 *pay child support.*

19 If the defendant appears at the hearing on the motion,  
20 the court shall inquire of the defendant if he or she desires  
21 to subpoena evidence and witnesses, if parentage is at  
22 issue and genetic tests have not already been conducted  
23 whether he or she desires genetic tests, and if he or she  
24 desires a trial. If the defendant's answer is in the  
25 affirmative, a continuance shall be granted to allow the  
26 defendant to exercise those rights. A continuance shall  
27 not postpone the hearing to more than 90 days from the  
28 date of service of the motion. If a continuance is granted,  
29 the court may make an order for temporary support  
30 without prejudice to the right of the court to make an  
31 order for temporary support as otherwise allowed by law.

32 (c) In any action to enforce a spousal support order the  
33 action may be pled in the name of the county in the same  
34 manner as an action to establish a child support  
35 obligation. The same restrictions on joinder of actions,  
36 coordination of actions, cross-complaints, and delay  
37 because of the pendency of any other action as relates to  
38 actions to establish a child support obligation shall also  
39 apply to actions to enforce a spousal support order.

1 (d) Nothing contained in this section shall be  
2 construed to prevent the parties from bringing an  
3 independent action under the Family Code and litigating  
4 the issues of support, custody, visitation, or protective  
5 orders. In that event, any support, custody, visitation, or  
6 protective order issued by the court in an action pursuant  
7 to this section shall be filed in the action commenced  
8 under the Family Code and shall continue in effect until  
9 modified by a subsequent order of the court. To the  
10 extent that the orders conflict, the court order last issued  
11 shall supersede all other orders and be binding upon all  
12 parties in that action.

13 (e) (1) After a support order, including a temporary  
14 support order and an order for medical support only, has  
15 been entered in an action brought pursuant to this  
16 section, the parent who has requested or is receiving  
17 support enforcement services of the district attorney shall  
18 become a party to the action brought pursuant to this  
19 section, only in the manner and to the extent provided by  
20 this section, and only for the purposes allowed by this  
21 section.

22 (2) Notice of the parent's status as a party shall be  
23 given to the parent by the district attorney in conjunction  
24 with the notice required by subdivision (e) of Section  
25 11478.2. The complaint shall contain this notice. Service  
26 of the complaint on the parent in compliance with  
27 Section 1013 of the Code of Civil Procedure, or as  
28 otherwise provided by law, shall constitute compliance  
29 with this section. In all actions commenced under the  
30 procedures and forms in effect on or before December 31,  
31 1996, the parent who has requested or is receiving  
32 support enforcement services of the district attorney shall  
33 not become a party to the action until he or she is joined  
34 as a party pursuant to an ex parte application or noticed  
35 motion for joinder filed by the district attorney or a  
36 noticed motion filed by either parent. The district  
37 attorney shall serve a copy of any order for joinder of a  
38 parent obtained by the district attorney's application on  
39 both parents in compliance with Section 1013 of the Code  
40 of Civil Procedure.

1 (3) The parent who has requested or is receiving  
2 support enforcement services of the district attorney is a  
3 party to an action brought under this section for issues  
4 relating to the support, custody, and visitation of a child,  
5 and for restraining orders, and for no other purpose. The  
6 district attorney shall not be required to serve or receive  
7 service of papers, pleadings, or documents, or participate  
8 in, or attend any hearing or proceeding relating to issues  
9 of custody or visitation, except as otherwise required by  
10 law. Orders concerning custody and visitation may be  
11 made in an action pursuant to this subdivision only if  
12 orders concerning custody and visitation have not been  
13 previously made by a court of competent jurisdiction in  
14 this state or another state and the court has jurisdiction  
15 and is the proper venue for custody and visitation  
16 determinations. All issues regarding custody and  
17 visitation shall be heard and resolved in the manner  
18 provided by the Family Code. Except as otherwise  
19 provided by law, the district attorney shall control  
20 support and parentage litigation brought pursuant to this  
21 section, and the manner, method, and procedures used in  
22 establishing parentage and in establishing and enforcing  
23 support obligations unless and until the parent who  
24 requested or is receiving support enforcement services  
25 has requested in writing that the district attorney close his  
26 or her case and the case has been closed in accordance  
27 with federal regulation.

28 (f) (1) A parent who has requested or is receiving  
29 support enforcement services of the district attorney may  
30 take independent action to modify a support order made  
31 pursuant to this section while support enforcement  
32 services are being provided by the district attorney. The  
33 parent shall serve the district attorney with notice of any  
34 action filed to modify the support order and provide the  
35 district attorney with a copy of the modified order within  
36 15 calendar days after the date the order is issued.

37 (2) A parent who has requested or is receiving support  
38 enforcement services of the district attorney may take  
39 independent action to enforce a support order made  
40 pursuant to this section while support enforcement



1 services are being provided by the district attorney with  
2 the written consent of the district attorney. At least 30  
3 days prior to filing an independent enforcement action,  
4 the parent shall provide the district attorney with written  
5 notice of the parent's intent to file an enforcement action  
6 that includes a description of the type of enforcement  
7 action the parent intends to file. Within 30 days of  
8 receiving the notice, the district attorney shall either  
9 provide written consent for the parent to proceed with  
10 the independent enforcement action or notify the parent  
11 that the district attorney objects to the parent filing the  
12 proposed independent enforcement action. The district  
13 attorney may object only if the district attorney is  
14 currently using an administrative or judicial method to  
15 enforce the support obligation or if the proposed  
16 independent enforcement action would interfere with an  
17 investigation being conducted by the district attorney. If  
18 the district attorney does not respond to the parent's  
19 written notice within 30 days, the district attorney shall  
20 be deemed to have given consent.

21 (3) The court shall order that all payments of support  
22 shall be made to the district attorney in any action filed  
23 under this section by the parent who has requested, or is  
24 receiving, support enforcement services of the district  
25 attorney unless support enforcement services have been  
26 terminated by the district attorney by case closure as  
27 provided by federal law. Any order obtained by a parent  
28 prior to support enforcement services being terminated  
29 in which the district attorney did not receive proper  
30 notice pursuant to this section shall be voidable upon the  
31 motion of the district attorney.

32 (g) Any notice from the district attorney requesting a  
33 meeting with the support obligor for any purpose  
34 authorized under this section shall contain a statement  
35 advising the support obligor of his or her right to have an  
36 attorney present at the meeting.

37 (h) For the purpose of this section, "a parent who is  
38 receiving support enforcement services" includes a  
39 parent who has assigned his or her rights to support  
40 pursuant to Section 11477.



(i) The Judicial Council shall develop forms to implement this section. These forms shall be available no later than July 1, 1998.

~~SEC. 3. Section 11477.03 is added to the Welfare and Institutions Code, to read:~~

~~11477.03. (a) In any action where support has been assigned pursuant to Section 11477, the district attorney and the obligor may stipulate to an order that suspends the accrual of interest, subject to all of the following conditions:~~

~~(1) The obligor shall be required to make immediate payment of all outstanding, unassigned child support arrearages.~~

~~(2) The obligor shall be required to make specified monthly payments toward assigned child support arrearages, with each monthly payment to be not less than 2 percent of all assigned support owed by the obligor at the time the agreement is made.~~

~~(3) The obligor shall be required to meet all current child support payment obligations.~~

~~(b) If an obligor who is a party to an agreement entered into pursuant to subdivision (a) fails to meet any of the conditions required by that agreement, interest shall begin to accrue on any outstanding support obligations.~~

~~SEC. 4. Section 11477 of the Welfare and Institutions Code is amended to read:~~

~~11477. As a condition of eligibility for aid paid under this chapter, each applicant or recipient shall do all of the following:~~

~~(a) (1) Assign to the county any rights to support from any other person the applicant or recipient may have in his or her own behalf or in behalf of any other family member for whom the applicant or recipient is applying for or receiving aid, not exceeding the total amount of cash assistance provided to the family under this chapter. Receipt of public assistance under this chapter shall operate as an assignment by operation of law. An assignment of support rights to the county shall also constitute an assignment to the state. If support rights are~~

1 assigned pursuant to this subdivision, the assignee may  
2 become an assignee of record by the district attorney or  
3 other public official filing with the court clerk an affidavit  
4 showing that an assignment has been made or that there  
5 has been an assignment by operation of law. This  
6 procedure does not limit any other means by which the  
7 assignee may become an assignee of record.

8 (2) Support that has been assigned pursuant to  
9 paragraph (1) and that accrues while the family is  
10 receiving aid under this chapter shall be permanently  
11 assigned until the entire amount of aid paid has been  
12 reimbursed.

13 (3) If the federal government does not permit states to  
14 adopt the same order of distribution for preassistance and  
15 postassistance child support arrears that are assigned on  
16 or after October 1, 1998, support arrears that accrue  
17 before the family receives aid under this chapter that are  
18 assigned pursuant to this subdivision shall be assigned as  
19 follows:

20 (A) Child support assigned prior to January 1, 1998,  
21 shall be permanently assigned until aid is no longer  
22 received and the entire amount of aid has been  
23 reimbursed.

24 (B) Child support assigned on or after January 1, 1998,  
25 but prior to October 1, 2000, shall be temporarily assigned  
26 until aid under this chapter is no longer received and the  
27 entire amount of aid paid has been reimbursed or until  
28 October 1, 2000, whichever comes first.

29 (C) On or after October 1, 2000, support assigned  
30 pursuant to this subdivision that was not otherwise  
31 permanently assigned shall be temporarily assigned to  
32 the county until aid is no longer received.

33 (D) On or after October 1, 2000, support that was  
34 temporarily assigned pursuant to this subdivision shall,  
35 when a payment is received from the federal tax  
36 intercept program, be temporarily assigned until the  
37 entire amount of aid paid has been reimbursed.

38 (4) If the federal government permits states to adopt  
39 the same order of distribution for preassistance and

1 postassistance child support arrears, child support arrears  
2 shall be assigned, as follows:

3 (A) Child support assigned pursuant to this  
4 subdivision prior to October 1, 1998, shall be assigned  
5 until aid under this chapter is no longer received and the  
6 entire amount has been reimbursed.

7 (B) On or after October 1, 1998, child support assigned  
8 pursuant to this subdivision that accrued before the  
9 family receives aid under this chapter and that was not  
10 otherwise permanently assigned, shall be temporarily  
11 assigned until aid under this chapter is no longer  
12 received.

13 (C) On or after October 1, 1998, support that was  
14 temporarily assigned pursuant to this subdivision shall,  
15 when a payment is received from the federal tax  
16 intercept program, be temporarily assigned until the  
17 entire amount of aid paid has been reimbursed.

18 (b) *In any action where support has been assigned*  
19 *pursuant to this section, upon stipulation of the district*  
20 *attorney and the obligor, the court may order that*  
21 *prospective accrual of interest on the unpaid judgment*  
22 *be suspended, subject to all of the following conditions:*

23 (1) *The obligor shall be required to make immediate*  
24 *payment of all outstanding unassigned child support*  
25 *arrearages.*

26 (2) *The obligor shall be required to make specified*  
27 *monthly payments toward assigned child support*  
28 *arrearages, calculated to pay off the balance within a*  
29 *reasonable period of time considering the balance owing*  
30 *and the income and assets of the obligor.*

31 (3) *The obligor shall be required to meet all current*  
32 *child support payment obligations.*

33 (c) *If an obligor who is party to an order made*  
34 *pursuant to subdivision (b) fails to meet any of the*  
35 *conditions stated for more than 60 days, interest shall*  
36 *begin to accrue on any outstanding support obligations.*  
37 *An agreement and order to suspend interest may be*  
38 *made only one time every seven years after the first order*  
39 *was made.*

1 (d) (1) Cooperate with the county welfare  
2 department and district attorney in establishing the  
3 paternity of a child of the applicant or recipient born out  
4 of wedlock with respect to whom aid is claimed, and in  
5 establishing, modifying, or enforcing a support order with  
6 respect to a child of the individual for whom aid is  
7 requested or obtained, unless the applicant or recipient  
8 qualifies for a good cause exception as provided in Section  
9 11477.04. The granting of aid shall not be delayed or  
10 denied if the applicant is otherwise eligible, if the  
11 applicant completes the necessary forms and agrees to  
12 cooperate with the district attorney in securing support  
13 and determining paternity, where applicable. The  
14 district attorney shall have staff available, in person or by  
15 telephone, at all county welfare offices and shall conduct  
16 an interview with each applicant to obtain information  
17 necessary to establish paternity and establish, modify, or  
18 enforce a support order at the time of the initial interview  
19 with the welfare office. The district attorney shall make  
20 the determination of cooperation. If the applicant or  
21 recipient attests under penalty of perjury that he or she  
22 cannot provide the information required by this  
23 subdivision, the district attorney shall make a finding  
24 regarding whether the individual could reasonably be  
25 expected to provide the information, before the district  
26 attorney determines whether the individual is  
27 cooperating. In making the finding, the district attorney  
28 shall consider all of the following:

29 (A) The age of the child for whom support is sought.

30 (B) The circumstances surrounding the conception of  
31 the child.

32 (C) The age or mental capacity of the parent or  
33 caretaker of the child for whom aid is being sought.

34 (D) The time that has elapsed since the parent or  
35 caretaker last had contact with the alleged father or  
36 obligor.

37 (2) Cooperation includes the following:

38 (A) Providing the name of the alleged parent or  
39 obligor and other information about that person if known  
40 to the applicant or recipient, such as address, social

1 security number, telephone number, place of  
2 employment or school, and the names and addresses of  
3 relatives or associates.

4 (B) Appearing at interviews, hearings, and legal  
5 proceedings provided the applicant or recipient is  
6 provided with reasonable advance notice of the  
7 interview, hearing, or legal proceeding and does not have  
8 good cause not to appear.

9 (C) If paternity is at issue, submitting to genetic tests,  
10 including genetic testing of the child, if necessary.

11 (D) Providing any additional information known to or  
12 reasonably obtainable by the applicant or recipient  
13 necessary to establish paternity or to establish, modify, or  
14 enforce a child support order.

15 (3) A recipient or applicant shall not be required to  
16 sign a voluntary declaration of paternity, as set forth in  
17 Chapter 3 (commencing with Section 7570) of Part 2 of  
18 Division 12 of the Family Code, as a condition of  
19 cooperation.

